



600 14th Street NW Suite 750 Washington D C 20005
W > <http://www.covad.com>

T > 202 220 0400
F > 202 220 0401

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October 17, 2002

Via hand delivery

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

OCT 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 01-338

Dear Ms. Dortch:

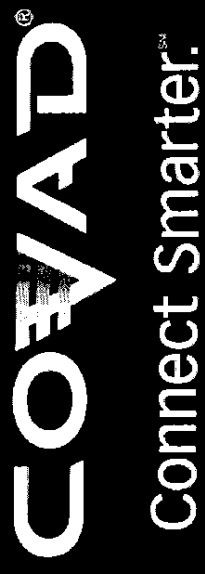
On October 17, 2002, Pravcen Goyal and Jason Oxman of Covad Communications met with Michelle Carey, Tom Navin, and Brent Olson of the Wireline Competition Bureau to discuss the Triennial Review proceeding. Covad's points are summarized in the attached presentation.

Respectfully submitted,

Florence Grasso

Cc: Michelle Carey
Tom Navin
Brent Olson

LIST A. CODE
Otl



Linesharing

Jason Oxman
Praveen Goyal
October 17, 2002

Addressing *USTA v. FCC*

- 251(d)(2) impairment
 - no alternative to the BOC loop plant
 - lineshared loops analysis the same as standalone loops
 - ITU-standard ADSL is designed to operate on shared line with voice.
- 251(d)(2) “at a minimum” --- policy questions
 - USTA affirms designation of linesharing as a UNE, but faults commission for failing to consider overall competition
 - competitive impact of linesharing: more ubiquitous deployment, lower prices, more innovation. No contrary evidence on the record. California is the best example.
 - BOC “investment incentive” arguments apply to equipment, not transmission grid, and linesharing UNE does nothing to disincent investment by CLECs or ILECs.
 - facilities-based competition requires unbundled access to BOC transmission grid, including linesharing, or there is no way to reach the end user.
 - Monopoly in broadband (or, at best, duopoly) harms consumers.



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Why the FCC can maintain linesharing

- *USTA* decision affirms designation of linesharing as fitting within Act's definition of network element.
- *USTA* court granted stay of linesharing vacatur -- standard includes "non-trivial likelihood" that agency can lawfully reinstate the rule on remand.
- *USTA* court believed that the Commission should unbundle network elements "where doing so would bring on a significant enhancement of competition."
 - Commission needs to apply a "limiting standard rationally related to the goals of the Act" - competition, consumer choice and broadband deployment.
 - Empirical evidence clearly demonstrates that unbundling of lineshared loops *clearly* enhances competition.



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How the FCC should maintain linesharing

- *USTA* court wants a limiting principle, and evidence of the positive impact on competition of linesharing.
 - Covad's limiting principle proposal: HHI analysis of loops to determine if an alternative provider of last mile connectivity is actually available to competitors.
 - HHI analysis in Covad Murray Reply Declaration concludes that in most geographic markets six alternative providers are sufficient to render UNE loop no longer necessary. States can do this analysis.
- Undisputed evidence on the record of substantial growth in broadband competition since adoption of linesharing UNE.
 - FCC sought specific comment, post-*USTA*, on broadband deployment. Record developed conclusively supports argument that broadband competition, and consumer welfare, have been enhanced by linesharing UNE.
 - According to FCC stats, DSL deployment up 47% in the second half of 2001, versus only 36% increase in first half of 2001.



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Why FCC should maintain linesharing

- Linesharing has been available for only 2 years, and deployment of CLEC and ILEC DSL services has exploded.
 - California, Covad's first and largest market: DSL beats cable modem, 57% to 43%.
 - FCC's own statistics show that ADSL lines in service increased by 47% during the second half of 2001, from nearly 2.7 million to over 3.9 million lines, compared to a 36% increase, from nearly 2 million to 2.7 million lines, during the preceding six months.
 - Q2 2002 -- SBC adds over 213,000 DSL lines -- best performance in 6 quarters.
- There is no "cost" or "investment disincentive" of unbundling linesharing -- DSL CLECs purchase and deploy all their own equipment, and ILECs fully recover the costs of loops from CLECs.
 - Covad has the largest DSLAM footprint in the country, and the second largest ATM network in the country. Covad requires unbundled access only to the ILEC transmission grid to reach end users.
 - With Bell long distance entry nearly complete, local transmission grid unbundling is now more important than ever.



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Nascent broadband services are not yet available to residential/SOHO customers

- Fixed wireless is gone. Teligent/Winstar are no more, AT&T cancelled Project Angel, Sprint cancelled its MMDS rollout.
 - Fixed wireless available to only 3% of the country at end of 2001 -- much less now. ILEC UNE "Fact" Report at IV-19, Table 6.
 - WCOM offers MMDS service in only a dozen markets to a few hundred customers (all business customers).
- DBS is too expensive for consumers, doesn't work well in the rain, requires unobstructed southern view, and no one is buying it for those reasons.
 - \$75/month, \$500 equipment, \$200 installation. WCOM HAI Report at 77.
 - Broadband satellite had only 200,000 customers by year end 2001. *ILEC UNE "Fact" Report at IV-21 (citing Yankee Group Fiber and Fixed Wireless Report).*
- Even in California, with the largest population and most expansive broadband deployment, only 13% have cable modem/DSL choice, according to CA PUC.



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Unbundling analysis for lineshared loops

- Impairment analysis of loops -- facilities-based carriers are impaired without access to loop transmission capability.
- Loop network element includes all “features, functions, capabilities” of loops.
 - *USTA* court expressly affirmed Commission’s designation of linesharing as a network element.
 - Both ILEC and CLEC “investment incentives” are preserved only by mandating loop/linesharing unbundling.
- Carriers seeking to deploy ADSL services are impaired without access to linesharing feature of loop.
 - ADSL designed to operate on upper frequencies of loops, and thus ADSL cannot be offered as a practical, economic or technical means over standalone loops (for all the reasons addressed in original order).
- Triennial Review record demonstrates conclusively that the goals of the Act are advanced only by mandating linesharing -- competition, lower prices, consumer choice, broadband deployment, all have resulted directly from linesharing, and all would be reduced or eliminated with linesharing.



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